



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

December 23, 2020

BY EMAIL

David S. Yudelson  
Sive, Paget & Riesel, P.C.  
560 Lexington Avenue, 15th Floor  
New York, NY 10022

Re: Gowanus Canal Superfund Site, Brooklyn, New York

Dear Mr. Yudelson:

The U.S. Environmental Protection Agency (EPA), Region 2, is in receipt of your November 4, 2020 letter to the Regional Administrator regarding the Gowanus rezoning process, which the City of New York (City) is preparing to resume shortly. Your letter has been referred to me for response.

On October 27, 2020, EPA wrote to the Director of the New York Department of City Planning (DCP) and the Commissioner of the New York City Department of Environmental Protection (DEP) to express its views regarding the rezoning. That letter was provided to the Gowanus Canal Community Advisory Group and other stakeholders, including yourself.

As EPA indicated in that letter, the proposed rezoning affects an area surrounding the Gowanus Canal, which EPA placed on the Superfund National Priorities List in March 2010. The Gowanus Canal Superfund Site (Site) includes the approximately 100-foot wide, 1.8-mile-long Canal and any areas that are sources of contamination to the Canal.

In 2013, EPA issued a Record of Decision (ROD) for the cleanup of the Canal that included dredging and off-Site disposal of much of the accumulated contaminated sediment within the Canal, capping of certain contamination remaining below the dredged material, and control of upland sources to prevent the recontamination of the clean Canal. See <https://semspub.epa.gov/work/02/692106.pdf>

Contamination from such upland sources leads to certain contaminated sewer solids being discharged into the Canal during Combined Sewer Overflow (CSO) events when stormwater and sanitary sewage capacity is exceeded within the approximately 1,758-acre Gowanus Canal watershed. The CSO portion of the EPA-selected remedy requires the City, a potentially responsible party for the Site, to design, construct, and operate two CSO retention tanks.

The first phase of the dredging and capping began in mid-November 2020 in the upper Canal (also referred to as Remediation Target Area or RTA 1), which is in the area where DCP has proposed rezoning for residential use. Progress towards the cleanup of the Canal is among the factors cited by the City in support of the rezoning.

Your letter posed the following questions, to which EPA has provided answers below:

**1. Does EPA oppose development on land adjacent to the Gowanus Canal NPL Site?**

In connection with EPA's decision to place the Site on the Superfund National Priorities List in March 2010, the City postponed the rezoning process that was then underway. EPA did not at that time, nor does EPA at present, take a position against the City's rezoning and redevelopment activities.

As EPA indicated in its October 27<sup>th</sup> letter, EPA does not have a direct role in local land-use or zoning decisions. However, accounting for current and anticipated future local land use is an important component in EPA's planning of response actions under the Comprehensive Environmental Response, Compensation, and Liability Act. EPA's role is to ensure that future land-use changes do not adversely affect the integrity of Superfund cleanups, including the ongoing cleanup work at the Gowanus Canal.

EPA intends to continue its cooperation with the City, community, property owners, and other stakeholders to ensure that proper measures are taken so that any development will proceed in a manner that maintains the protection of human health and the environment as laid out in EPA's Canal remedy.

**2. Does EPA agree that redevelopment that adheres to all federal, state and local requirements, including remediating the upland properties to eliminate or contain contaminated source material and separating storm water from discharges to the combined sewer system and treating it prior to discharge to the Canal, is consistent with the long-term remedy for the Canal?**

Such measures for upland contaminated properties are consistent with the requirements of EPA's ROD, which anticipates that cleanup of the upland properties will occur, primarily, under the oversight of the New York State Department of Environmental Conservation (NYSDEC), with input from EPA. In addition, the ROD requires the City and property owners of parcels abutting the Canal to implement measures to address discharges to the Canal, including stormwater separation and control, and the elimination of or appropriate treatment for all non-CSO point discharges to the Canal. The ROD states:

Current and future high density residential redevelopment along the banks of the canal and within the sewershed shall adhere to NYC rules for sewer connections (Chapter 31 of Title 15 of the Rules of the City of New York) and shall be consistent with current NYCDEP criteria (NYCDEP, 2012) and guidelines to ensure that hazardous substances and solids from additional sewage loads do not compromise the effectiveness of the permanent CSO control measures by exceeding their design capacity. For example,

redevelopment projects will need to take mitigation measures to prevent or offset additional sewer loadings. Separated stormwater outfalls will also require engineering controls to ensure that hazardous substances and solids are not discharged to the canal. (ROD at page 84).

EPA has worked with some upland property owners to achieve discharge controls and will assess the impact of potential additional discharges to the Canal due to proposed development which may result in EPA requiring measures to prevent such discharges from impacting the Canal remedy.

**3. Does EPA agree that the land adjacent to the Canal can be remediated sufficiently to render it suitable for residential development?**

EPA, working closely with NYSDEC, has overseen the cleanup and redevelopment process for the Lightstone residential properties. In that case, EPA required that appropriate cleanup and engineering control measures be implemented. Other lands directly adjacent to the Canal may also be developed for residential use provided that appropriate cleanup and engineering control measures are utilized. EPA will coordinate with NYSDEC to ensure that appropriate action is taken if EPA becomes aware that additional measures are necessary at any property to ensure a proper cleanup.

**4. Does EPA intend to continue to require the City to design and build new sanitary and stormwater infrastructure that will, in light of the reasonably foreseeable development, avoid the recontamination of the Canal with sanitary waste and sediment?**

The ROD requires the City to construct two CSO tanks and take other discharge control measures, noted in response 2 above. In developing the ROD, EPA took into consideration the likelihood that redevelopment would occur and selected CSO controls that would be compatible with future redevelopment. EPA believes that, if properly and timely implemented, the range of measures required by the ROD, as further elucidated in response 2 above, should prevent recontamination of the Canal. Pursuant to two EPA administrative orders, the City is required to design those CSO tanks and to perform, along with other parties, the first stage of the dredging and capping work in RTA 1. EPA anticipates the City will be required to construct the CSO tanks pursuant to a future EPA enforcement instrument. Progress on the CSO tanks has been delayed by DEP. In June 2020, DEP requested that EPA grant an extension of time to complete the CSO tanks. On November 6, 2020, EPA denied that request. EPA is currently engaged in discussions with the City to establish the timeline for completing both the design and construction of the CSO tanks.

**5. Will EPA require the City to remove from the remediated portions of the Canal any accumulated contaminated CSO solids?**

EPA's 2016 administrative order with the City provides that in the event delays in construction of the CSO tanks result in recontamination of the Canal at levels exceeding the EPA-established threshold, EPA will require the City to perform maintenance dredging of contaminated CSO solids that accumulate on top of remediated areas.

**6. Does EPA agree that the economic benefits of redevelopment provide revenue sources for the required remedial and infrastructure work under the ROD, as well as on the private parcels?**

In light of the need to construct bulkhead upgrades to support the dredging, EPA has worked closely with various owners of properties along the Canal. Their performance of such work has directly reduced the ROD cleanup costs for the City and other parties. The property owners have also performed upland cleanups, typically under NYSDEC oversight, which have facilitated redevelopment of these properties. Such redevelopment has increased tax revenue to the City. The City has indicated in the past that the rezoning is expected to provide significant tax revenue and other economic benefits to the City. EPA is unaware of the extent to which such tax revenue may be used by the City for cleanup.

Thank you for your interest in this matter. EPA looks forward to engaging with the City, the community, and other stakeholders in a cooperative manner so that EPA may provide appropriate cleanup information for productive consideration of rezoning issues.

Sincerely,



Brian E. Carr  
Assistant Regional Counsel  
Office of Regional Counsel